

EXHIBIT 2

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION: MIDDLESEX COUNTY
3 DOCKET NO. MID-2912-17AS
4 APPELLATE DOCKET NO. _____

5 RICARDO RIMONDI AND PILAR RIMONDI,)

)

6 Plaintiffs,)

)

7 v.)

)

8 BASF CATALYSTS LLC, et al.,)

)

9 Defendants.)

)

)

MOTIONS

10 Place: Middlesex County Courthouse
11 56 Paterson Street
12 New Brunswick, New Jersey 08903

Date: Friday, February 22, 2019

13
14 BEFORE:

15 HON. ANA C. VISCOMI, J.S.C.

16
17 TRANSCRIPT ORDERED BY:

18 ALLISON BROWN, ESQ.

19 WEIL, GOTSHAL & MANGES LLP

20
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3 THE LANIER FIRM

Attorneys for Plaintiffs

4 ALLISON BROWN, ESQ.

5 JED WINER, ESQ.

6 WEIL, GOTSHAL & MANGES LLP

-and-

7 JOHN C. GARDE, ESQ.

McCARTER & ENGLISH

8 (Present for Morning Session)

Attorneys for Defendants,

9 Johnson & Johnson, and

Johnson & Johnson Consumer, Inc.

10 JOHN C. McMEEKIN, II, ESQ.

11 SEBASTIAN A. GOLDSTEIN, ESQ.

12 SAM GARSON, ESQ.

RAWLE & HENDERSON, LLP

13 (Present for Morning Session)

Attorneys for Defendants,

14 Cyprus Amax Minerals Company

1 THE COURT: Good morning. We are here with
2 regard to Ricardo and Pilar Rimondi versus BASF
3 Catalyst et al., Docket Number 2912-17, continuing in
4 limine matters prior to the commencement of this trial
5 which is Monday, February 25.

6 May I have appearances, please, on behalf of
7 the plaintiff.

8 MS. COOPER: Yes, your Honor. This is Monica
9 Cooper with the Lanier Law Firm for plaintiffs.

10 MR. COTILLETTA: Good morning, your Honor.
11 Joseph Cotilletta.

12 THE COURT: Thank you.

13 On behalf of the defendants, beginning with
14 Cyprus Amax Minerals Company.

15 MR. McMEEKIN: Good morning, your Honor.
16 John McMeekin on behalf of Cyprus Amax Mineral Company.

17 MR. GOLDSTEIN: And good morning, your Honor.
18 Sebastian Goldstein on behalf of Cyprus Amax Minerals.

19 MR. GARSON: Good morning, your Honor. Sam
20 Garson on behalf of -- on behalf of Cyprus Amax Mineral
21 Company.

22 THE COURT: See, I jinxed you.

23 And now on behalf of the defendants Johnson &
24 Johnson and Johnson & Johnson Consumer Incorporated.

25 MR. GARDE: Good morning, your Honor. John

1 Garde of McCarter & English.

2 MS. BROWN: Good morning, your Honor. Alli
3 Brown for the J&J defendants, with my colleague Jed
4 Winer from my office as well.

5 MR. WINER: Good morning, your Honor.

6 THE COURT: Good morning and welcome back.

7 So as I indicated, the court has, off the
8 record, the court has several rulings to put on the
9 record as a result of a series of motions that were
10 argued in the past few days. The first is the motion
11 by the defendant Cyprus Amax Minerals Company for
12 reconsideration of this court's December 21, 2018,
13 order which denied its motion for summary judgment.
14 And I won't go over the arguments in depth placed by
15 counsel on the record. It's a matter of the record
16 already. They need not be recited again. Just some
17 discussions with regard to that.

18 So back on December 21, 2018, the court did
19 hear the motion for summary judgment. There had been a
20 series of cases in which this court granted Cyprus Amax
21 Minerals Company's summary judgment. And this was
22 after the court's granting directed verdict in the
23 Lanzo trial of Cyprus Amax Minerals Company.

24 However, in this motion, in opposition to the
25 motion for summary judgment back in December of 2018,

1 opposition filed by the Lanier firm, this is the first
2 time that the court had seen evidence submitted to
3 oppose that motion, which were affirmative pleadings by
4 Cyprus Amax Minerals Company in the context of
5 declaratory judgment action wherein it is indicated
6 that it is indeed a successor company and it is seeking
7 the benefit of insurance policies. It was on that
8 basis that the court denied the motion for summary
9 judgment, and that is a matter of the record.

10 Now, in this motion for reconsideration of
11 this court's order, the moving party, CAMC, raises
12 three points as a basis for reconsideration; one is the
13 jurisdictional action, jurisdictional matter which is
14 the subject of appeal in a separate matter; the Huff
15 versus, I think Arkema is the first name plaintiff,
16 which is presently on appeal; the issue of successor
17 liability, and then that there is something new for the
18 court to consider and that is the deposition testimony
19 of CAMC corporate representative Patrick Downey, that
20 deposition being noticed and taken after the motion for
21 summary judgment.

22 So on a motion for reconsideration, what is
23 proper before the court is, to consider it is basically
24 that based upon the record in the prior motion, motion
25 for summary judgment, that the court either heard in

1 its analysis that it is not applying the law correctly
2 or that there is something new that was not available
3 in advance. So the court does not consider the issues
4 of jurisdiction or successor liability which are being
5 raised for the first time now, although one could say,
6 could argue that the reason why successor liability is
7 being raised now is as a result of the opposition, but
8 certainly there was the opportunity to raise that in
9 the reply that had been submitted.

10 So having reviewed the motions, the
11 oppositions and other -- and the reply and arguments of
12 counsel herein, and I did spend quite a bit of time
13 reviewing this and analyzing it, looking at
14 Mr. Downey's deposition, but essentially certainly
15 Mr. Downey's deposition on this issue could have been
16 taken before one could argue, although alternatively
17 one could also state that until the opposition was
18 filed which brought this whole issue into question
19 about the affirmative pleadings, that it was not
20 something that CAMC was in a position to have to
21 address.

22 The court essentially relies on its ruling of
23 December 21, 2018, which denied the motion for summary
24 judgment, denies reconsideration; in essence, all that
25 Mr. Downey presents is a corporate representative's

1 version of what those pleadings mean and his knowledge
2 as a corporate representative thereof. And so in
3 context of the pre -- alleged pre 1992 exposures, CAMC
4 remains in this case, and so the motion for
5 reconsideration is denied and I will provide you a copy
6 of the order.

7 MR. McMEEKIN: Thank you, your Honor.

8 THE COURT: Thank you.

9 MR. McMEEKIN: Your Honor, may I address the
10 court?

11 THE COURT: Of course.

12 MR. McMEEKIN: We will be filing a motion for
13 stay and motion to sever CAMC.

14 THE COURT: Okay.

15 MR. McMEEKIN: We have a copy of it here. We
16 have not yet filed it with the court. We will file it
17 and you can hear it whatever time you'd like to.

18 THE COURT: Well, I'd like to do it today.
19 Have you provided a copy of this to plaintiffs?

20 MR. McMEEKIN: We have not, your Honor. We
21 were waiting for your Honor's ruling.

22 THE COURT: I know, but I don't want to take
23 up the jury's time on Monday and if you need to go to
24 the appellate division by way of emergent relief, I'd
25 like to take care of it today. So if you could provide

1 a copy -- excuse me -- to plaintiffs' counsel and I
2 have conference calls at 3 o'clock on a separate
3 asbestos matter that I need to take care of; how about
4 we have oral argument at -- later on this morning if we
5 could, if plaintiffs are ready; otherwise, we could do
6 it at 1 o'clock or 1:30.

7 MR. COTILLETТА: I'm sorry, your Honor. I
8 just need to make a call to somebody, so we could argue
9 before the afternoon and that's fine with us. I just
10 need to make a call.

11 THE COURT: Why don't you do that now.

12 MR. COTILLETТА: Thank you, judge.

13 THE COURT: Do you want to take the papers
14 with you?

15 MR. COTILLETТА: Yes, judge. Thank you.

16 THE COURT: How about we take -- how much
17 time do you need, 15 minutes?

18 MR. COTILLETТА: 15 minutes would be great,
19 judge. Thank you.

20 THE COURT: 15-minute break. Provide counsel
21 those papers, if you could provide my copy, and then
22 file it with the clerk in due course.

23 That is extra orders?

24 MR. McMEEKIN: I'll swap you.

25 COURT CLERK: Off the record, judge?

1 THE COURT: Off the record.

2 (Brief recess.)

3 THE COURT: So we're back on the record with
4 the next motion.

5 MS. COOPER: I'm sorry, your Honor. May I
6 grab Mr. Cotilletta?

7 THE COURT: If he's still on the phone leave
8 him on the phone, right?

9 MS. COOPER: That's fine, your Honor.

10 THE COURT: I mean, go ahead. If he needs to
11 be on the phone that's fine, but if he's not on the
12 phone you can bring him back in.

13 How about some water there?

14 MR. McMEEKIN: It was the coffee that did it.

15 MS. COOPER: I don't know where he went, your
16 Honor, so --

17 THE COURT: Okay. We'll continue. Do you
18 want to excuse yourself to get water?

19 MR. McMEEKIN: No, I'm fine, your Honor.

20 THE COURT: Next is a motion to preclude the
21 testimony of Alice Blount. This was filed by the
22 defendants. Essentially the defendants contend that
23 although the plaintiffs identified Alice Blount as a
24 fact witness, that due to the nature of her testimony
25 and her area of expertise that she is, in fact, an

1 expert.

2 The plaintiffs designated Dr. Blount as a
3 fact witness back, I believe, in April of last year,
4 2018. And they did not receive any objections from the
5 defendants prior to the filing of the motion for -- to
6 bar.

7 The defendants assert that her testimony, in
8 addition to being expert testimony in nature,
9 constitute inadmissible hearsay for which there's no
10 exception; also indicate that her 1990, 1991 article
11 with regard to the testing that she did that when she
12 was deposed she talked about acquiring the Sample I
13 which was the Sample I designated as a Johnson &
14 Johnson product, baby powder product in 1996, so there
15 were some issues there; also argued that the
16 methodology that she utilized was not adopted by EPA,
17 OSHA, or NIOSH, and so therefore, it creates a concern
18 under the recent Accutane decision and argued
19 relevancy.

20 In opposition to this motion, the plaintiffs
21 assert that she is a fact witness; that the court has
22 heard her testimony before and allowed it in the
23 context of a fact witness; and that she is elderly and
24 unavailable living at Rutland, Vermont, and so that her
25 deposition is appropriate to be played as a fact

1 witness under Rule 416:1(c) also, that her methodology
2 is incorporated as an ISO methodology.

3 So I've considered the arguments by counsel
4 and also including the various attempts by the
5 plaintiffs at the court's direction to contact
6 Dr. Blount to ascertain her availability and I've
7 been -- we were advised yesterday by counsel that she
8 responded to, I think an e-mail request, she says I'm
9 82 years old and I live in Rutland, Vermont.

10 So the issue at play here is that when her
11 deposition was taken, which was sometime after the
12 Lanzo trial, was taken by Mr. Lanier and there were
13 counsel present for Johnson & Johnson, counsel present
14 for Imerys Talc America, but CAMC asserts herein that
15 there was no counsel present on behalf of CAMC and
16 therefore, that that testimony certainly cannot be used
17 as to CAMC.

18 In reviewing the case law and the court rules
19 and the evidence rules, so this court first looks to
20 414 -- excuse me 416:1C which provides, "Except as
21 otherwise provided by 414:9E, the deposition of a
22 witness, whether or not a party, may be used by any
23 party for any purpose, against any party who was
24 present or represented at the taking of the deposition
25 or who had reasonable notice thereof. If the court

1 finds that the appearance of the witness cannot be
2 obtained because of death or other inability to attend
3 or testify such as age, illness, infirmity or
4 imprisonment or is out of the state or because the
5 party offering the deposition has been unable, on the
6 exercise of reasonable diligence, to procure the
7 witness's attendance by Subpoena, provided, however,
8 that the absence of the witness was not procured or
9 caused by the offering party, deposition of an absent
10 but not unavailable witness may also be so used.

11 "If, upon application and notice, the court
12 finds that such exceptional circumstances exist, it's
13 to make such use desirable in the interest of justice
14 and with due regard to the importance of presenting the
15 testimony of witnesses orally in open court."

16 So while one could argue of the similarity
17 and motive in defending against any deposition against
18 Imerys and CAMC, the court does not do that. The court
19 permitted this testimony in the Henry trial and finding
20 that she was part of the story. She was a consultant
21 at one point in time for Johnson & Johnson. There was
22 communication between her and Johnson & Johnson
23 relative to her testing. And so the court will permit
24 her testimony under 416:1C.

25 She is of that age, 82, where she's not an

1 active 82-year-old and she does live out of state. I
2 don't think that the Subpoena requirement there to
3 compel an 82-year-old to travel would be appropriate.
4 The plaintiffs certainly sought to try to procure her
5 testimony voluntarily. But the court will permit her
6 testimony to be used as to the defendant Johnson &
7 Johnson only.

8 I understand that there have been
9 designations by both sides and that the court had, when
10 it played the video in the Henry case, had read to the
11 jury a stipulation with regard to that testimony and
12 that would be something the court would consider herein
13 as appropriate. But the motion to otherwise preclude
14 her testimony is denied, and we'll get you copies of
15 the orders.

16 If you give me a moment, I have two more
17 motions.

18 Two more motions were filed by the plaintiff
19 seeking sanctions. First is the motion for sanctions
20 due to discovery abuse and spoliation of evidence by
21 the defendant Johnson & Johnson and Johnson & Johnson
22 Consumer Incorporated.

23 In moving for sanctions, this motion is
24 essentially divided into three parts where the
25 plaintiffs contend that there were discovery abuses

1 that are sanctionable.

2 So first was with regard to the scheduling of
3 the deposition of Johnson & Johnson's corporate
4 designee, Dr. John Hopkins. The court has discussed
5 that extensively herein and noted that we're dealing
6 with national litigation, not with regard -- only with
7 regard to the allegation that talc was contaminated
8 with asbestos and caused mesothelioma, but that talc
9 caused ovarian cancer.

10 So if you look at the responsibilities of
11 Johnson & Johnson's corporate designee in that regard
12 in connection with both discovery depositions and trial
13 testimony, they are tremendous responsibilities, and
14 the parties have to coordinate the scheduling of this
15 deposition.

16 So certainly this deposition didn't happen
17 earlier. The court had ordered it happen by February 4
18 and that date did not occur. But what happened was
19 that Dr. Hopkins was called to testify in connection
20 with a trial out in California. So while this court
21 had entered an order, the court does not see the fact
22 that that deposition did not occur on that date as a
23 violation, willful violation of an order by the
24 defendant Johnson & Johnson, but merely recognizing
25 what all of us judges recognize is that we have to take

1 into consideration that certainly a deposition,
2 discovery deposition does not trump the requirement of
3 producing a witness for purposes of live testimony at
4 trial.

5 Second area that the defendants -- plaintiffs
6 assert that sanctions should be awarded by the court as
7 against Johnson & Johnson is the contention that J&J
8 defendant's deficient Interrogatory responses and/or
9 request for production of document responses. And
10 there was significant -- a lot of that deals with the
11 issue of the time period that Mr. Rimondi spent in Peru
12 and deriving as much information as possible, discovery
13 as possible.

14 And so Mr. Bernardo was here from Skadden,
15 Arps yesterday and he detailed painstakingly the
16 attempts to comply with discovery for an entity that no
17 longer essentially exists, as of 30 years ago, that
18 documents were then moved off-site and in accordance
19 with document retention policies, were ultimately
20 destroyed well before any litigation contemplated
21 someone outside of this country pursuing a cause of
22 action for alleged exposure that occurred 30, 40 years
23 prior in another country, not the United States.

24 Documents were provided to counsel. I
25 understand from Mr. Bernardo, if I understood

1 correctly, that there were initial document production
2 all across that involved redactions, but that
3 ultimately they determined that it was better to
4 provide documents unredacted and then deal with the
5 issues and so that's what they did. So they took it
6 upon themselves to do a second production of all these
7 documents.

8 The court is satisfied that there was a
9 diligent response to discovery, and sometimes documents
10 don't exist and you just have to live with that. Not
11 only was there diligent efforts to provide discovery,
12 but then to create documents and provide them,
13 documents that they did not have to create which showed
14 in categories of types of documents, where they're --
15 essentially creating a comprehensive index of the
16 production of documents which they are not required to
17 do. So certainly the efforts to produce were
18 reasonable and diligent, and there is no basis for
19 which the court to sanction the defendant in that
20 regard.

21 Next, the final area in this section, this
22 motion, is that the J&J defendants, February 1, 2019,
23 filing of Dr. Gibbs' and Weill's supplemental expert
24 reports and reliance materials are out of time, and
25 they are. The court's already ruled upon that. But

1 certainly what would be the court's decision in that
2 regard, not to sanction but to bar, and so that's what
3 the court has done, and essentially ruled those out of
4 time.

5 The sanctions that were requested were
6 comprehensive. I won't read all of them. They take up
7 an entire page. But they include the ultimate sanction
8 of dismissal of pleadings with prejudice, not being
9 able to produce corporate representative, Dr. Hopkins',
10 prior or live testimony.

11 So plaintiffs have failed to meet their
12 burden as to why this court should impose any sanctions
13 as to any of these issues. It is their burden to meet.
14 And the motion for sanctions due to alleged discovery
15 abuses and spoliation of evidence by Johnson & Johnson
16 is denied. We'll provide you a copy of that order.

17 Which leaves us one more motion. In this
18 motion, plaintiffs seek an adverse inference
19 instruction due to the alleged spoliation of evidence
20 by defendants Johnson & Johnson, Johnson & Johnson
21 Consumer Incorporated, Imerys Talc America Incorporated
22 and Cyprus Amax Minerals Company. Imerys Talc America
23 has filed for bankruptcy, so the court will not address
24 that aspect of this motion.

25 So in essence what this motion says is that

1 back in 1969, as to the J&J entities, that they should
2 have been aware of pending litigation and essentially
3 preserved talc samples, grids and other testing
4 evidence. I asked counsel for the plaintiff during
5 oral argument, are you saying that there was the
6 obligation of Johnson & Johnson and Cyprus Amax
7 Minerals, as the case might be, that every testing
8 sample had to be preserved going back to 1969. I don't
9 know that I ever received an answer to that. And I
10 certainly haven't been able to find any law that would
11 require that.

12 So if you go back to 1969, according to the
13 plaintiffs, Johnson & Johnson was aware of danger
14 relative to inhalation of the, quote, spicule, closed
15 quote, or, quote, needle-like crystals of tremolite in
16 its talc, and on the basis of that one document, they
17 assert that there should have been a litigation hold at
18 that time.

19 I haven't been able to find any case law that
20 goes back to 1969 that would require something of that
21 nature.

22 We move forward in time as to other examples.
23 I think we next come to the Westfall case which we've
24 heard a lot about. That matter, which was filed in
25 Rhode Island, involved industrial talc, and Johnson &

1 Johnson was not brought into that case until, I
2 believe, 1982, and then they were dismissed in 1983.
3 So by virtue of them being brought in, although they
4 were involved prior to 1982 as a consultant, I
5 understand, it is the assertion of the plaintiffs that
6 a litigation hold should have been in place at that
7 time.

8 The plaintiffs assert that as an active
9 participant in Westfall, J&J knew that talc samples,
10 talc ore samples, identification of purchasers and
11 suppliers of talc and identification of source ore
12 mines were paramount. And it should be noted that that
13 case involved alleged exposures to industrial talc
14 which is not at issue herein, but rather cosmetic talc
15 is.

16 After the Westfall case there are a series of
17 other cases, I think the next cases don't come up until
18 1996. So with regard to Johnson & Johnson, the
19 plaintiffs assert that there was a legal duty to
20 maintain those samples, assert the same as it relates
21 to CAMC, and find that sanctions are warranted because
22 of defendants' intentionally spoliated relevant
23 evidence and documentary evidence for decades.

24 I'm sorry, I discussed Westfall. There was
25 also the Gambino case of 1983. That case involved

1 talcosis, did not involve mesothelioma or an
2 asbestos-related illness for that matter.

3 As to CAMC, CAMC asserts it was not formed
4 until 1993 and it was not in the talc business. Also
5 assert that the plaintiffs have presented no evidence
6 that CAMC destroyed any materials relevant to this
7 lawsuit, much less bad faith or even negligently. The
8 court would agree in that regard.

9 As to defendant Johnson & Johnson asserts
10 that the plaintiffs can't demonstrate J&J had a duty to
11 retain materials at issue, and can't establish that J&J
12 defendants acted intentionally in bad faith or even
13 negligently, nor is there any evidence of extreme
14 prejudice to the plaintiffs.

15 So the court finds that essentially the
16 plaintiffs have failed to meet their burden of proof as
17 to intentional bad faith or even negligently spoiling
18 evidence; in fact, I saw the summary of samples that
19 were produced in this case. I was provided by
20 plaintiffs' counsel, as part of this motion, another
21 copy brought to the court yesterday where these are
22 samples that go back, I think there might be one in the
23 late 1800s, but certainly in the early 1900s through
24 present of Johnson & Johnson's Baby Powder that had
25 been produced or had been made available.

1 Unlike the first Johnson & Johnson case that
2 this court tried where no samples were requested by
3 plaintiffs, in the Lanzo matter, I know that in Johnson
4 & Johnson's Answers to Interrogatories they did
5 indicate samples were available, but plaintiffs never
6 requested them. Plaintiffs at that point had given
7 Dr. Longo samples that three plaintiffs' firms had
8 acquired through the eBay system.

9 We move forward -- in that case,
10 understanding it's on appeal so I won't say that much,
11 but as to Imerys Talc America, not CAMC but just to
12 show the distinction, Imerys Talc America erroneously
13 indicated in Answers to Interrogatories that it did not
14 have any samples, and yet through their corporate
15 designee it was learned that they did have samples. So
16 there was a distinction there as to what happened.

17 So in Henry, samples were provided by Johnson
18 & Johnson, additional samples, not through eBay. These
19 were provided by J&J and counsel had the ability, or
20 rather, plaintiffs had the ability to present their
21 defense based upon samples that were not obtained
22 through eBay. And there are even more samples that
23 were provided herein. I think, because there's ongoing
24 testing, ultimately the court had to cut it off at some
25 point to move forward. I think there's about 50 or so

1 that ultimately were tested here.

2 And in determining this issue of prejudice
3 because the plaintiffs have indicated they're
4 prejudiced because those samples were not retained,
5 they nonetheless have an availability of samples that
6 span decades of usage of the product as alleged by
7 Mr. Rimondi. And also the court finds persuasive the
8 testimony of Dr. Longo wherein, I'm trying to look for
9 that quote, but he basically says, hey, the mines
10 really don't change over a long period of time.

11 And so while one may not have the samples
12 that correspond with the documents that were produced
13 in these cases, although there is cross-examination
14 there for plaintiffs with regard to those documents and
15 the meaning of what a non-detect is and what is the
16 level of sensitivity in the testing, those are all
17 cross-examination that the jury can then consider; but
18 with this testimony of Dr. Longo indicated that the
19 mines don't change, the mines don't change over the
20 course of decades, then the plaintiffs have the ability
21 to have testing done on a whole series of available
22 samples that span the decades.

23 So the court denies the motions seeking
24 sanction -- adverse inference due to spoliation of
25 evidence. Certainly if the plaintiffs are inclined to

1 renew it at the close of the case they may do so, if
2 they feel that circumstances are appropriate, but at
3 this point the court finds that the plaintiff has not
4 met their burden in that regard as to the J&J
5 defendants and Cyprus Amax Minerals. Thank you. I'll
6 provide a copy of that order.

7 All right. So I think what we come to is, I
8 do want to discuss, when do you think we'll be able to
9 hear that motion, Mr. Cotilletta?

10 MR. COTILLETТА: We're ready.

11 THE COURT: Okay. I left it in the back.
12 Give me a moment and I'll bring it right back. Just go
13 off the record.

14 (Off the record.)

15 THE COURT: Next before the court is a motion
16 that was filed this morning, and this is by the
17 defendant CAMC to stay this action or in the
18 alternative, to sever the claims against the defendants
19 CAMC, Cyprus Amax Minerals Company.

20 Who will argue this motion on behalf of the
21 moving party?

22 MR. McMEEKIN: Your Honor, John McMeekin, on
23 behalf of defendant Cyprus Amax Minerals Company.

24 THE COURT: Thank you. On behalf of the
25 plaintiffs?

1 MR. COTILLETТА: Your Honor, Joseph
2 Cotilletta from the Lanier Law Firm.

3 THE COURT: Thank you.

4 Will the J&J entities be taking a position on
5 this?

6 MR. GARDE: We will, your Honor. John Garde
7 of McCarter and English.

8 THE COURT: Thank you. Whenever you're
9 ready.

10 MR. McMEEKIN: May I proceed, your Honor?

11 THE COURT: Yes.

12 MR. McMEEKIN: Your Honor, by way of
13 background, and your Honor is aware of this but for the
14 record purposes, Imerys Talc America Inc. was a
15 defendant in this and other pending talc litigation in
16 New Jersey and around the country. Imerys Talc America
17 and other Imerys entities filed for Chapter 11
18 bankruptcy on February 13.

19 I have raised with your Honor at conference
20 call we had preliminary to setting motions for argument
21 that it was our position that this court lacked
22 jurisdiction at all by virtue of the filing of the
23 bankruptcy. The plaintiffs had not moved to lift the
24 stay and that the court could not proceed forward at
25 all in this case.

1 THE COURT: Okay. Are you now making that
2 argument on behalf of ITA or CAMC or both?

3 MR. McMEEKIN: I'm going to make it on behalf
4 of CAMC, your Honor.

5 THE COURT: Okay.

6 MR. McMEEKIN: So for that purpose I had
7 raised the issue and your Honor advised you disagree
8 with that position.

9 Proceeded forward to today and your Honor has
10 denied the motion for reconsideration.

11 THE COURT: Summary judgment.

12 MR. McMEEKIN: As to summary judgment,
13 correct, your Honor.

14 At this point, your Honor, the liabilities
15 which CAMC has sought to be held liable for are related
16 claims to the Imerys Talc America bankruptcy. The
17 motion we have pending before your Honor is a motion to
18 sever and -- I'm sorry, a motion to stay and if not, a
19 motion to sever CAMC out of the case by virtue of both
20 the pendency of the bankruptcy and the relatedness of
21 the claims, but also the prejudice which CAMC has by
22 virtue of Imerys Talc America filing for bankruptcy.

23 Your Honor, I will dispense with the factual
24 background of the case. Your Honor is very well aware
25 of it and all the other records substantiate what the

1 factual record is as to the claims; but very briefly,
2 they involve exposure to talc from 1960 until after
3 1993 when CAMC came into business.

4 One of the issues that's going to have to be
5 dealt with with this court and with this jury is how to
6 address the bankruptcy of Imerys Talc America. The
7 claims as to CAMC are related, but we are going to have
8 to talk with the jury about the bankruptcy because the
9 claims against CAMC go past 1993 and it is CAMC's
10 position that those claims would have been the
11 responsibility of Imerys Talc America, that Imerys Talc
12 America should be published to the jury as to that
13 liability, and the jury will be told or should be told
14 about the bankruptcy of Imerys Talc America and how it
15 applies to this case.

16 Further, your Honor, to the extent that there
17 is argument or assertions as to Cyprus Mines
18 Corporation and what liabilities went where, we'll have
19 to talk with the jury about those liabilities. Our
20 position is those liabilities would have flowed to
21 Imerys Talc America, Imerys Talc America's
22 predecessors, and that the jury will be involved in a
23 determination of the bankruptcy. That is why the
24 bankruptcy court has very wide discretion and
25 jurisdiction over relatedness claims.

1 So, your Honor, I think we are in a position
2 where there will be undue prejudice to both the
3 plaintiffs and the defendants in this case if CAMC was
4 compelled to continue on in this litigation. For that
5 reason, we are asking CAMC be severed out, it could be
6 severed out without prejudice for a determination of
7 what, if any, liabilities would befall to it or a
8 determination by the bankruptcy court as to the scope
9 of relatedness.

10 I say the scope of relatedness because we are
11 only about a week after the bankruptcy has been filed.
12 It is unreasonable to expect for CAMC, the nonmoving
13 party in bankruptcy, to be able to get its arms around
14 the ramification of Imerys Talc America having filed
15 for bankruptcy in such a short time.

16 And we cite to the Borough of Glassboro case
17 where the court can balance the equities including the
18 probability of success on appeal and the interest in
19 avoiding irreparable harm and hardship to the parties.
20 Your Honor has remarked in this case and other cases
21 about the value of the jury's time, the value to the
22 litigants and the values to the court about prolonged
23 proceedings. There is clearly a hardship that would
24 fall if, at some point during this trial, the court
25 determined that there was a relatedness and this case

1 was removed. It would be the defendant's position at
2 that point that if a stay was entered it applies to the
3 entire case, not just to the case against CAMC. And so
4 it would require, at that point, a mistrial.

5 So we raise these issues to the court for
6 purposes of a stay of the proceedings, but certainly
7 that CAMC could be severed out without prejudice.

8 There is also additional prejudice to CAMC,
9 your Honor; for example, Mr. Downey, Cyprus Amax
10 Mineral's corporate designee, is himself tied up in the
11 bankruptcy. We don't have the ability to -- he's not a
12 New Jersey resident. We don't have the ability to
13 compel him to appear. He was properly designated as
14 CAMC's corporate designee at a time when CAMC and
15 Imerys Talc America, neither of them were in
16 bankruptcy. Imerys Talc America's filing for
17 bankruptcy is a severe prejudice to CAMC in terms of
18 how it is able to defend the case.

19 Your Honor, for the reasons we have
20 articulated, we think the prejudice is grave. We think
21 the impact to the trial, to the court and the jury's
22 schedule is significant, having to publish to the jury
23 issues of bankruptcy which are not within the jury's
24 purview. But also I'd raise, your Honor, there's even
25 been issues today with your Honor's rulings that impact

1 the difference between CAMC and Johnson & Johnson. For
2 example, Dr. Blount's video, it would be very difficult
3 to say that this can only be considered as to Johnson &
4 Johnson but it has to do with the potential finding of
5 asbestos in talc and that period that would have been
6 the Imerys talc. So again, the jury is going to be
7 wrestling with these issues that are beyond the scope
8 of the jurisdiction of this court and are very clearly
9 within the related scope of the bankruptcy that is
10 currently pending in the State of Delaware.

11 THE COURT: Thank you.

12 MR. McMEEKIN: Thank you, your Honor.

13 THE COURT: Mr. Cotilletta.

14 MR. COTILLETТА: Thank you, your Honor.

15 I'm in a unique position because we are
16 likewise seeking a stay but on different grounds, and
17 we object to their and oppose their stay because our
18 stay is different. Our stay conceivably, and we have
19 to get the application to the court, I don't think we
20 have them up here yet, but one for the stay and one for
21 the consolidation. And so it's possible that if the
22 appellate division was going to take this into
23 consideration for our case, that they would decide in a
24 matter of days as opposed to this which is seeking
25 essentially another court, out of state court, to

1 assume jurisdiction on not just this case on a national
2 basis that would affect all cases where plaintiffs'
3 firms have sued CAMC in this -- I'm talking about in
4 this jurisdiction, not just the Lanier Law Firm but
5 other firms. And so I have to oppose the stay on that
6 ground because it's indefinite.

7 Mr. Rimondi and any other case Lanier has
8 with CAMC will never see the light of day because
9 apparently they'll be moving for a similar motion and
10 to have bankruptcy subsumed into CAMC on all their
11 cases.

12 And the other issue, judge, is that they
13 cited three exhibits; one of them's a bankruptcy
14 filing, it's Exhibit A. It doesn't mention CAMC.
15 They're a separate entity. They've always argued that.
16 And they've argued there was a liability split.
17 There's a lot of information that's not put in this
18 motion that makes it really hard to -- for me to be
19 able to argue what they're saying. They're saying a
20 lot of different things that I don't know what's going
21 on in the bankruptcy docket. I don't know if they made
22 any motions in the bankruptcy docket to seek
23 the court's jurisdiction and to say that the debtor's
24 estate is included with CAMC's liabilities in cosmetic
25 talc litigation.

1 Likewise, with the issue of Pat Downey,
2 there's no exhibit to that. Right now it's all
3 speculation. What evidence do they have that Pat
4 Downey is now subsumed as a part of that and they don't
5 have control? They've always produced him both as a
6 corporate representative of ITA and CAMC. I don't see
7 any evidence why they don't have control of Mr. Downey
8 because he's been produced in both of those capacities.
9 He did it in this case as well.

10 The issue of severance, it's the same
11 reasons. There's speculation right now, and they would
12 need to produce more evidence to be able to make a full
13 determination as to whether or not a severance is
14 appropriate.

15 Those are my objections and my opposition.
16 Thank you.

17 THE COURT: Thank you. Mr. Garde.

18 MR. GARDE: Your Honor, on behalf of Johnson
19 & Johnson, I'm only here to argue about Rimondi and the
20 issue as this application relates to the Rimondi matter
21 which is scheduled for trial on Monday.

22 Johnson & Johnson has no objection to a
23 severance of CAMC provided it's only CAMC and the
24 moving forward to trial on Monday. That's our
25 position.

1 THE COURT: Thank you.

2 When the Imerys Talc America, Imerys Talc
3 Vermont, and Imerys Talc Canada bankruptcy was filed
4 and we had our conference call very early on after that
5 occurred and I had indicated at that time the concern
6 that CAMC was not listed as a separate entity that
7 would be provided that protection; similar to two other
8 Imerys Talc's iterations that are not covered for which
9 we have cases here; namely, Imerys Talc U.S.A. and
10 Imerys Talc Italy.

11 So now CAMC is before this court and with
12 this filing the court has reviewed the submission and
13 feels that a stay of the entire proceeding is not
14 appropriate. The way that this court has dealt with
15 bankruptcies in the past, based upon its understanding
16 of bankruptcy laws, is that essentially the court is
17 deprived of jurisdiction from that entity that has
18 filed for bankruptcy but that the case moves forward.

19 So a stay of this entire proceeding would not
20 be appropriate. However, the court agrees with CAMC
21 that it is up to the bankruptcy court to determine the
22 relatedness of CAMC to ITA, Imerys Talc America, Imerys
23 Talc Vermont.

24 The court has had the benefit of having
25 Imerys Talc America and CAMC before it for about three

1 years. Both entities have shared local counsel,
2 national counsel, corporate designee and in the
3 organizational hierarchy structure of the Cyprus
4 entities and Luzenac and Imerys Talc America, they all
5 seem to flow. At least that has been the contention.

6 So I am of the opinion that this court at
7 this point does not have jurisdiction, that in terms of
8 relatedness it's up to a bankruptcy judge to determine,
9 and so that severance of the CAMC claim in this case is
10 appropriate and I will sign the order in that regard.

11 MR. McMEEKIN: Thank you, your Honor.

12 THE COURT: So, counsel, I'm going to make
13 sure you get a copy of this now so that you can do
14 whatever is necessary.

15 Off the record.

16 (Off the record.)

17 (Luncheon recess taken from 12:30 p.m. to
18 1:50 p.m.)

A F T E R N O O N S E S S I O N

THE COURT: We're back on the record and I just want to do a quick overview of what we have left to do this afternoon, not in any particular order. Blount designations; review of the preliminary charges to the jury real quickly, including the proposed charge relative to Imerys Talc America and CAMC. I think there was supposed to be some kind of a stipulation, or that might be related to the Blount designation which would be read to the jury in advance of the video being played, and then the voir dire of the jurors as to what they've been doing for the past few weeks in relation to keeping up with media and whatever may have happened on the Today show today.

Is there anything else we need to cover before Monday?

MS. BROWN: Not for us, your Honor.

MS. COOPER: Your Honor, we just want to make the court aware, we spoke with Brian Rimondi, one of Mr. Rimondi's sons. He was hospitalized this morning, so we will keep the court updated. We don't really know how long that might be or exactly the situation, but just wanted to let the court know he is hospitalized currently.

THE COURT: Okay. If you can give us an

1 update on Monday.

2 MR. COTILLETТА: I'll let the court know.

3 THE COURT: Thank you. And I know that at
4 three o'clock today your IT people are going to be able
5 to go into the high tech courtroom to set up.

6 MS. BROWN: Thank you, judge.

7 THE COURT: We needed to take care of
8 something first, Mr. Cotilletta, so that you could
9 leave to take care of other matters. What are we
10 taking care of?

11 MR. COTILLETТА: Okay. Well, first thing,
12 judge, may I approach with the applications that we
13 have to give to the court regarding the emergency
14 appeal?

15 THE COURT: It's just a copy. Sure. You
16 have a copy for counsel?

17 MS. BROWN: Yes.

18 THE COURT: How many copies do you have
19 there?

20 MR. COTILLETТА: I was told I have to give
21 the court one for stay and one for the consolidation,
22 so I'm not sure why there's four here.

23 THE COURT: I only want one of each.

24 COURT OFFICER: (Handing.)

25 THE COURT: Thank you.

1 So what was it that we needed to entertain
2 before so that you could go?

3 MR. COTILLETТА: So there is two stipulations
4 that would be a part of preliminary charges. One of
5 them dealt with the fact that now CAMC and Imerys Talc
6 are out of the case, and the second one is a
7 stipulation regarding essentially who the proper
8 entities for the foreign exposures based on the
9 stipulation that my firm and Skadden, Arps had entered
10 into this court had so ordered earlier in October of
11 2018.

12 THE COURT: Okay. Now, for the first one
13 that deals with what we're going to tell the jury about
14 Imerys Talc America and Cyprus Amax Minerals Company,
15 which one am I looking at?

16 MR. COTILLETТА: So you have one that doesn't
17 have a red marking on it. That is J&J's proposal. One
18 that I have, the one that I gave the court is the one
19 with the red marking. And we generally agree that
20 there needs to be a charge.

21 Plaintiffs' position, we want to keep it very
22 simple. Not explain why they're out. I think that's
23 the fairest way to do it. Just say they're out of the
24 case and you're not to consider why they're out of the
25 case and leave it at that. If we start talking about

1 bankruptcies or legal technicalities, it can be
2 prejudicial.

3 THE COURT: All right. So, for the record,
4 what the plaintiffs have proposed is the following:
5 "Imerys Talc America and CAMC are no longer defendants
6 in this case. You are not to speculate as to why
7 Imerys Talc America and CAMC are no longer defendants
8 in this case."

9 Proposal by the defendant J&J, JJCI: "Imerys
10 Talc America and Cyprus Amax Minerals Company are no
11 longer defendants in this case due to technical legal
12 issues. Imerys Talc America and Cyprus Amax Mineral
13 Company did not settle with or pay money to the
14 plaintiffs. You are not to speculate as to why Imerys
15 Talc America and Cyprus Amax Mineral Companies are no
16 longer defendants in this case."

17 So why do you object to the proposal which is
18 just telling them they're no longer in this case,
19 you're not to speculate why, they are going to think
20 that there was a settlement and that could be
21 prejudicial, if you think about it, it really cuts both
22 ways. So they could think oh, well, then there's
23 something to this case, and be prejudicial to the
24 plaintiff; in second regard, they might think if they
25 were to find, for example, that the plaintiff had

1 proven its case, that oh, well, they have settled
2 already with regard to one, so, you know, that might
3 affect your damages.

4 MR. COTILLETТА: And I understand that, it
5 cuts either way. The reason why I don't like the
6 language from Johnson & Johnson's proposal is because
7 it may -- right now what you and I just said seems to
8 be, it could be bounced and go one way or the other.

9 If you look at the Johnson & Johnson
10 proposal, they might think of it as, well, if they're
11 not in the case anymore and there's no settlement, then
12 the plaintiff doesn't have a legitimate case, plaintiff
13 is not bringing legitimate cases to some of the
14 co-defendants. And that's the fear I have is that
15 there might be speculation in the jury's mind that
16 we're just suing whoever.

17 MS. BROWN: And I appreciate that, judge.
18 And due to a technical legal issue was meant to address
19 just that point to just kind of say it's a
20 technicality.

21 THE COURT: We could say due to technical
22 legal issues related to those two entities.

23 MS. BROWN: That's fine, too.

24 THE COURT: So that just hones in on them
25 that it was a technical legal issue as it related to

1 those two.

2 MS. BROWN: That's fine as well.

3 MR. COTILLETТА: That's fine, judge.

4 THE COURT: Okay. So you're going to add
5 that to the language?

6 MS. BROWN: Judge, if it's helpful, we can
7 send Shirley and, of course, a copy to plaintiffs, an
8 updated copy, whatever's easier.

9 THE COURT: Yeah. If you wouldn't mind, in
10 addition to Shirley, could you copy my law clerk?

11 MS. BROWN: Of course.

12 THE COURT: Because Shirley has the flu. I
13 don't know if she's going to be in on Monday.

14 MS. BROWN: Of course.

15 THE COURT: Thank you.

16 MS. BROWN: We'll say due to technical legal
17 issues related to those two entities.

18 THE COURT: Right.

19 MS. BROWN: Okay.

20 THE COURT: Let's look at the second, which
21 was: "In this case plaintiffs allege exposure to
22 Johnson's Baby Powder in Peru from 1960 to 1992.
23 Johnson & Johnson Consumer Incorporated states that
24 Johnson's Baby Powder sold in Peru from 1960 to 1992
25 was safe, did not contain asbestos and did not cause

1 plaintiff's mesothelioma.

2 "However, plaintiffs and defendants agree
3 that for purposes of this case, Johnson & Johnson
4 Consumer Incorporated, a United States company, is the
5 proper defendant and the company that would satisfy any
6 judgment arising from exposure to Johnson's Baby
7 Powder.

8 "This stipulation should be considered only
9 for the purpose of determining who is the proper party
10 to be sued and who would satisfy a judgment and for no
11 other purpose."

12 Why are we telling them this, or whatever
13 variation you may agree upon, now rather than at the
14 end of the trial right before the charge?

15 MR. COTILLET: My only concern is if we
16 start talking about the facts of the case in opening,
17 the fear that I have is that the jurors might think in
18 their head, wait a minute, there's Peruvian exposure
19 here, there's U.S. companies. They failed to sue the
20 Peruvian company. Why isn't there a Peruvian entity in
21 this case?

22 And so I know that takes a little bit of
23 thought to get there for the jurors. We do have some
24 jurors with advanced degrees and things like that, so
25 I'm thinking they're going to reach that point and say

1 why isn't there a Peruvian entity?

2 I get it, judge. I know that for sure it
3 should be in the closing. I have proposed to
4 Miss Brown we should do it in the beginning, too, just
5 because we don't know how, what they're going to think
6 of that and that's a risk.

7 THE COURT: Do you agree to this language?

8 MS. BROWN: I agree to the language on mine.

9 THE COURT: The one that I just read?

10 MS. BROWN: Yes. I, too, share the views
11 that this is better at the end. Frankly, I don't think
12 we need a charge on this at all, but I was willing to
13 work with Mr. Cotilletta and the court's decision on
14 when it should be read.

15 THE COURT: Okay. So the plaintiff, you
16 wanted to add J&J to this?

17 MR. COTILLETTA: Right.

18 THE COURT: How did you want yours to read?

19 MR. COTILLETTA: It would read the same way
20 except where it says Johnson & Johnson Consumer Inc.,
21 it would say Johnson & Johnson and Johnson & Johnson
22 Consumer Inc., and then everything where there's issues
23 in the singular would be pleural.

24 THE COURT: Okay. Has there been any kind of
25 stipulation -- so in Lanzo, ultimately I granted the

1 motion for directed verdict on a motion at the end to
2 let out J&J because JJCI was a wholly owned subsidiary
3 that indicated that to the extent that there would be
4 any liability, they would be responsible for it. Do we
5 have a similar situation here; rather than starting
6 this trial with both, can we narrow it down, or is that
7 not possible?

8 MS. BROWN: So, your Honor, from our point of
9 view I think it is possible and it's even cleaner here,
10 frankly, in most cases. And the reason for that is
11 that for the 1960 to 1992 Peruvian exposure period we
12 entered a stip that Mr. Bernardo spoke about yesterday
13 and we said JJCI will assume liability, if any, for
14 that period of time.

15 So that covers what sometimes, as your Honor
16 has grappled with, can be a difficult situation for
17 those earlier years, and certainly by the time he gets
18 to the United States in '92, JJCI is already the entity
19 that would be responsible.

20 So from our point of view, it is very
21 clearly, given this foreign stip, just JJCI, and I
22 offered a stipulation to that effect and it has not
23 gotten anywhere.

24 MR. COTILLET: So the issue is there's been
25 some movement on the national level with information we

1 received since Lanzo. I had that meet and confer with
2 Skadden. They didn't know the answer at that time and
3 that was what is the liability split. J&J, my
4 understanding from documents I reviewed, there seems to
5 be that they were actually independently liable in the
6 very beginning before they had these divisions. And
7 they were like, we don't know the answer, we'll get
8 back to you. So they amended their Interrogatory
9 responses.

10 In the Rimondi case there's two sets of
11 supplemental Interrogatories. There's one I call
12 supplemental Interrogatories regarding Peru and there's
13 supplemental Interrogatories regarding U.S. exposures.
14 So for that Interrogatory Number 16, and that was where
15 I told them they need to make an amendment, the
16 question asks, "Identify where your cosmetic or
17 personal hygiene products including but not limited to
18 those identified by plaintiffs or any fact witness in
19 this case were manufactured, assembled and distributed
20 and by whom, name and address."

21 And then it says, answer to Interrogatory
22 Number 16, "By agreement of the parties at the April
23 26, 2018, meet and confer, between plaintiffs' counsel
24 and J&J's counsel, plaintiffs are providing" -- excuse
25 me -- "defendants are providing an amended response to

1 the Interrogatory with respect to Johnson's Baby Powder
2 only."

3 Then it states that they have a reasonable
4 and good faith belief that the following entities were
5 responsible for manufacture and distribution of
6 Johnson's Baby Powder during the following periods.
7 The first bullet point, 1894 to 1972, Johnson &
8 Johnson. Second bullet point, 1972 to 1979, Johnson &
9 Johnson Baby Products Company, a division of Johnson &
10 Johnson.

11 And then the third bullet point is where it
12 carries on to what eventually would be JJCI and that
13 one is '79 to '81, Johnson & Johnson Baby Products
14 Company, which is actually then an actual separate
15 entity.

16 And so if you take that with the fact that in
17 one of our clauses talks about that the stipulation we
18 entered into with Skadden was in exchange for a
19 stipulation that the defendants, that's defined as J&J
20 and JJCI, accept liability for Johnson's brand talcum
21 powder sold in Peru.

22 So the issue going back from yesterday, the
23 issue we had with Skadden was we wanted to avoid the
24 apparent manufacturer doctrine and piercing the
25 corporate veil. So what they said was okay, we really

1 would like JJCI to be responsible in these kind of
2 cases and the only way we're going to agree to this is
3 if you agree they accept liability. Darron and I had a
4 back and forth with Mr. Bernardo about it, and
5 eventually we concluded that we would contain a
6 provision that would allow us to still go after Johnson
7 & Johnson because I said hey, wait, you guys have it in
8 here that the Johnson's Baby Powder the plaintiffs
9 identified in this case through the entirety of their
10 exposure that from '60 to '72 was J&J, and potentially
11 also between '72 and '79. They said okay, and that's
12 how we got to the agreement.

13 So I don't disagree that JJCI would be
14 responsible from '79 on. I think it's unclear and I
15 don't feel necessarily comfortable agreeing to letting
16 them out at this point; however, I can agree to circle
17 back towards the end of the case to try to see if
18 that's something we could do instead of having there be
19 motion practice. I would like some facts to come out
20 more than what the Interrogatories are showing if you
21 think that Mr. Hopkins -- Dr. Hopkins is going to say
22 at trial something that's contradictory.

23 THE COURT: What about a signed stipulation
24 from someone that's authorized to bind the company and
25 as I read these proposed stipulations, whether it's the

1 defendants' or whether it's the plaintiffs' request to
2 add J&J, correct me if I'm wrong, Mr. Rimondi also
3 alleges exposure to talc post 1992.

4 MR. COTILLETТА: Correct.

5 THE COURT: So if we read this to the jury at
6 the beginning you really have to address post '92;
7 otherwise they are thinking oh, well, then what about
8 post '92, right? I mean, even though you have opening
9 statements and I'm telling them opening statements is
10 not evidence, then the court presents a stipulation
11 which they must, you know, consider, and it doesn't
12 address post '92 exposure.

13 MR. COTILLETТА: So I don't know if I, maybe
14 I never said this to you. I did have initial thoughts
15 to have a stipulation that had a sentence in there
16 somewhere in that that broke down the liability. It
17 says from -- from 1960 to 1992 would be Johnson &
18 Johnson, I don't know if that carries '79, from '79 or
19 so on it would be JJCI. I don't know if I ever
20 actually officially proposed that to you, but I did
21 have a sentence in a draft, judge, that I would be okay
22 with adding a sentence in with that.

23 MS. BROWN: I think these discussions sort of
24 highlight that a charge like this is not appropriate in
25 the beginning of the case. And to the extent that

1 they're going to rely on Interrogatories which,
2 frankly, I would contend don't apply where we allowed
3 them not to go have to sue the Peruvian entities, in
4 exchange JJCI would accept liability, but it seems that
5 at a bare minimum on the eve of openings this is not a
6 charge that should happen Monday. And to the extent
7 that Mr. Cotilletta feels, during the course of his
8 case, he has established liability as to J&J, then this
9 is perhaps better visited at the charge conference.

10 MR. COTILLETТА: Just one second, judge.

11 MS. BROWN: I mean, if I could --

12 MR. COTILLETТА: You know, I obviously don't
13 want to burden everybody with back and forth. Maybe we
14 can just have a simple stipulation that says something
15 like, I don't know, there are no improper parties at
16 this point based on the exposure, something like that.
17 I mean, I don't know, judge.

18 MS. BROWN: Anything like that now is going
19 to suggest there's something improper. I understand
20 the concern of plaintiffs, right. They are trying to
21 cure the fact that we had an agreement that they didn't
22 have to sue J&J Peru. I understand that. And it may
23 be appropriate in the charges that they get at the end
24 to explain, JJCI or J&J Peru is not here and there's
25 nothing wrong with that. But once we start going

1 beyond the Peru period about which entity, I think
2 we're paying more attention to the liability piece --

3 THE COURT: Right. Whereas, as opposed to at
4 the end of the case before your charge, you know, they
5 now will have heard all of the evidence and so that
6 they know that this alleged exposure for which
7 plaintiff is seeking judgment on their behalf, it runs
8 from 1960 through sometime here in the United States
9 and then we're just highlighting for them this one
10 portion of, by the way, here's what we've stipulated to
11 relative to that time period.

12 MS. BROWN: Agreed, your Honor.

13 THE COURT: Look, think about it over the
14 weekend. If you feel that -- to read this to the jury
15 in either form in the court's mind begs the question
16 well, what about post 1992. So they're going to sit
17 there and wonder throughout the trial well, why are
18 they giving us, why are we hearing evidence, wasting
19 our time regarding about after they came to the United
20 States when they just told us about that 32-year time
21 period outside of this country.

22 MS. BROWN: Yes. We're happy to work with
23 you as it gets closer to the charge conference on
24 something more appropriate. Thanks, judge.

25 THE COURT: That's how we're going to resolve

1 that.

2 Is there anything else we need to take care
3 of before you need to go?

4 MR. COTILLETТА: No, judge. I know you
5 mentioned preliminary charges. Are you going through
6 like kind of the --

7 THE COURT: Preliminary charges, I'm going to
8 go through them right now. First is 1.11 which is,
9 discusses the role of the jury, judge and attorneys,
10 right. Number 1.25, that's the optional charge
11 regarding or concerning video recorded testimony which
12 we have in this case. Then the prohibition,
13 preliminary charge 1.11 B, prohibition regarding
14 discussion of the case; 1.11 C, jurors not to do
15 independent research; 1.15, preliminary instruction
16 before trial regarding jurors taking notes;
17 preliminary -- 1.23, preliminary instructions regarding
18 jurors taking -- submitting questions.

19 And what I've added to the preliminary
20 charge, the model one, is the sentence as it reads in
21 the model charge is "in this trial, after the lawyers
22 have asked their own questions of each witness." What
23 we have tailored that to is "their own questions of
24 witnesses testifying on technical or complex issues."
25 So that, for example, if the plaintiff takes the

1 witness stand or any other fact witness, they're not
2 going to be submitting questions with regard to any of
3 that testimony.

4 And this charge highlights that they're not
5 here as the third party in the room. They are here to
6 understand the testimony. So if there's anything that
7 they don't understand, only then, and it also
8 highlights for them not to take it personally if you
9 don't ask the question, you know, all of that.

10 1.11 E is outline of the order of the events,
11 so I just go through opening statements, evidence, and
12 then closing statements. I'm not giving a charge with
13 regard to settled defendants 'cause there aren't any,
14 although that would be the time period to talk about
15 Imerys Talc America, CAMC. And then we're letting them
16 know there's a jury of eight, and then after the
17 court's charge at the end of the case we will select
18 alternates, but they all have to pay attention.

19 Then I'm supposed to discuss scheduling, and
20 we'll go over that briefly again with them; and then
21 the final preliminary charge is cell phone, pagers,
22 other wireless communication devices. All right.

23 MS. BROWN: Judge, before that would it be
24 appropriate to ask about recent news or after?

25 THE COURT: I think the issue with regard to

1 recent news is why don't we -- want to do it one by one
2 at sidebar.

3 MS. BROWN: Okay.

4 THE COURT: Part of that inquiry is if they
5 say that they have --

6 MS. BROWN: Exactly.

7 THE COURT: -- is have you spoken with any of
8 the other jurors in relation to that, so keep that in
9 mind that that's something we want to ask. And then
10 hopefully there are no issues.

11 MS. BROWN: Hopefully.

12 MS. COOPER: After all this.

13 MR. COTILLETТА: I didn't know it was the
14 Today show.

15 THE COURT: Did you hear what happened in a
16 criminal trial down in Monmouth County? Monmouth
17 County is the next county down. There was a murder
18 trial that was going on, 21 days in, this young woman
19 whose body has not been found, and someone who was a
20 childhood friend that supposedly they were going to run
21 off together, supposedly, he is the one that's been on
22 trial for her murder. Someone testified, someone that
23 makes movies, a friend of his, about meeting with him
24 and wherein he told him, hey, this is supposedly an
25 idea for a movie, and supposedly tells him everything

1 that had happened.

2 So 21 days in, the State, I think, had just a
3 few more witnesses left and they were going to rest and
4 as has happened to me in one of my cases, one of the
5 jurors goes on Facebook that night and says, sitting in
6 this murder trial LMAO. So the judge went -- it was
7 brought to the attention of the judge. The judge
8 called the juror to the sidebar, ultimately released
9 that juror. That juror claims, based upon the time
10 that it was posted, that it was her sister using her
11 account. But then I think there may have been
12 discussions with another juror because a second juror
13 was released as well.

14 MS. COOPER: Had to be, to release both of
15 them, it would have to be they conferred with each
16 other.

17 MS. BROWN: They have enough people to keep
18 losing that many, though?

19 MS. COOPER: Did that bust the panel?

20 THE COURT: No.

21 Yeah, and the first juror afterward gave an
22 interview --

23 MS. BROWN: Oh my God.

24 THE COURT: -- what it was like sitting on
25 that trial.

1 MS. BROWN: I'm sure no one saw that.

2 MS. COOPER: Did he do that immediately after
3 while the jury is still on or when the trial was over?

4 THE COURT: No. The minute he got bounced he
5 gave an interview.

6 MS. COOPER: So inappropriate.

7 THE COURT: So, we'll talk to them on Monday.

8 MS. BROWN: Thank you. Thanks, judge.

9 THE COURT: If any one of them has seen it
10 and has discussed it, we have to deal with that.

11 MS. BROWN: Okay.

12 MS. COOPER: Yes, your Honor.

13 THE COURT: Hopefully after all the
14 excitement we've had now, we won't have anymore on
15 Monday.

16 Okay. So those are the preliminary charges.

17 MS. BROWN: Thank you, your Honor.

18 MR. COTILLETТА: Awesome. Thank you, your
19 Honor. See you on Monday.

20 THE COURT: Get some sleep.

21 MR. COTILLETТА: I don't know.

22 THE COURT: Okay. We next turn to
23 Dr. Blount. So you're going to submit the revised --

24 MS. BROWN: I am.

25 THE COURT: -- instruction about telling the

1 jury about CAMC and Imerys Talc America.

2 MS. BROWN: Yes. And actually, with your
3 Honor's permission, I'll just head back now and we'll
4 get that to you.

5 THE COURT: Okay.

6 MS. BROWN: Mr. Winer will handle the Blount
7 depositions.

8 Thank you, judge. We'll see you Monday.

9 THE COURT: Thank you.

10 You don't need to stand unless you want to.

11 MS. COOPER: We've been working so hard over
12 the weekend. Or not the weekend, the...

13 THE COURT: Since during the lunch break.
14 May feel like the weekend.

15 MR. WINER: Your Honor --

16 THE COURT: Again, for the record, could you
17 spell your last name?

18 MR. WINER: Jed Winer, from Weil, Gotschal
19 and Manges, for the Johnson & Johnson defendants.

20 Miss Cooper and I have met and conferred over
21 the lunch break and I am pleased to report that we have
22 -- lunch break consisting of an Atkins bar and a
23 PowerBar, I believe. But we have made significant
24 progress, so we have substantially narrowed down the
25 issues.

1 The first thing I can report is we have
2 agreed on an instruction that should be read to the
3 jury --

4 THE COURT: Prior to.

5 MR. WINER: -- prior to the video being
6 played. And I'll just put it on the record if that's
7 okay.

8 THE COURT: Sure.

9 MR. WINER: That number one, after
10 Dr. Blount's deposition was taken, Johnson & Johnson
11 requested Dr. Blount provide any documents or data
12 concerning testing she has done of Johnson & Johnson
13 products since the 1991 paper. Dr. Blount responded
14 that she did not maintain any such documents or data.

15 And then number two, Dr. Blount did not
16 permit any of the parties to test the Johnson's Baby
17 Powder bottle that she brought to her deposition.

18 So we have agreed on that.

19 THE COURT: Okay. You can send that to
20 Shirley and Greyson. That would be great.

21 MR. WINER: Certainly. I think with that
22 I'll get into the few objections that we have, and then
23 I know Miss Cooper has some as well.

24 So with respect to the plaintiffs'
25 designations, our first objection is on page 23 of the

1 transcript.

2 THE COURT: Before you go there, I'm going to
3 raise this. You can be seated. I don't know if
4 previously on page 16, the plaintiffs have an objection
5 to line 6 through 25. Have you removed that?

6 MR. WINER: That was actually our objection.

7 THE COURT: Yes. That's what I meant, the
8 defendants.

9 MR. WINER: I didn't think it was relevant
10 but...

11 THE COURT: I have issues beyond that having
12 nothing to do with relevance, and if you don't mind
13 that I express them.

14 So the first time I heard this I actually was
15 offended by it insofar as, you know, that old joke in
16 the '50s and '60s that women went to college to get an
17 M-R-S degree. And I know that that was not the intent
18 of Mr. Lanier. But if you read this, I mean, and it
19 makes no difference that there are no women on this
20 jury, but if you read this, with all due respect, I
21 mean, it's a cute story of how they met, but that's not
22 what's coming out here in this.

23 I don't know if you agree or disagree, but,
24 you know, to say now you've also got, if I remember the
25 story correct, you've also got a husband at the

1 University of Wisconsin. Yes, that's right. It's not
2 on your resume. How did you find your husband when you
3 were looking at rocks? You know, I mean, no offense,
4 but I don't think it belongs. I don't think it
5 belonged back in the '50s or '60s whenever she went and
6 graduated -- 1970s. I don't think it belonged then and
7 it doesn't belong now.

8 So I really suggest you consider removing
9 this. If you want to say it's with regard to relevancy
10 that's fine, but I find it offensive. And that's not
11 just from a woman's perspective, from a professional's
12 perspective, you know. But regardless of whether you
13 agree or disagree with her testing and all of that, I
14 mean, this is someone who got a master's of science in
15 geology and a Ph.D. in geology in the 1970s and, you
16 know, that was trailblazing at the time. I'm sure she
17 encountered a lot of issues because of her gender, not
18 studying in what was a recognized woman's field, you
19 know.

20 MS. COOPER: Absolutely.

21 THE COURT: So I think you should reconsider
22 that.

23 MS. COOPER: I will have it removed.
24 Absolutely, your Honor.

25 THE COURT: Thank you. So I think you were

1 talking about page 23.

2 MR. WINER: Yes, your Honor.

3 THE COURT: Okay.

4 MR. WINER: On page 23, and sort of to your
5 Honor's comment you just made, I have tried to narrow
6 the instances where we feel strongly about some of the
7 lawyer commentary that went on during this deposition.

8 THE COURT: Like we sat on the porch and had
9 pie.

10 MR. WINER: Some of this stuff, yeah, I would
11 submit is a little over the top. But the first one
12 relates to that on the bottom of page 23 where counsel
13 refers to having Dr. Blount autograph the 1991 paper.
14 I don't see how that's relevant and certainly I think
15 it's prejudicial.

16 MS. COOPER: I'm sorry. Were you done,
17 Mr. Winer?

18 MR. WINER: Just for the record, that same
19 issue comes up again on page 36 where counsel says that
20 this, you signed your name the same way for me at the
21 bakery, in the coffee shop in Rutland, Vermont when I
22 had you autograph your article. I think it's
23 unnecessary and it's prejudicial.

24 MS. COOPER: Your Honor, what I would
25 suggest, starting with page 23, is taking out I got

1 your autograph copy, didn't I, starting at, I got an
2 autograph copy, didn't I, and taking that line out.

3 So just pointing out she signed it. Not that
4 it's an autographed copy or anything like that, as far
5 as that's concerned. But I do think it's important to
6 point out that it is the same person that signed this
7 document that signed it back in the past and that is
8 the relevance that I see there.

9 As far as cutting down on page 36 --

10 THE COURT: So what you're saying is, judge,
11 we need to leave in that part that I got the amphibole
12 content cosmetic and pharmaceutical talc to publish in
13 1991. Is that correct? Yeah, it looks like it. And I
14 made you sign it. That's right, you did.

15 Because you're trying to say then that
16 relates to, on 36, all right, then there's one other
17 letter that I found interesting what's marked as
18 exhibit number, I can't read that part in red, I'm
19 looking specifically at a letter that someone wrote,
20 Alice Blount, Ph.D., minerals. Is that you? Yes. Is
21 that your signature? Yes. In fact, you signed your
22 name in 1998 just about -- okay.

23 So what you're trying to do just is verify
24 that the '91 paper that she signed and this 2000 -- and
25 this other letter that she signed, that it's the same

1 person that's authored them.

2 MS. COOPER: Yes, your Honor, that would be
3 the purpose.

4 MR. WINER: I don't think there's any dispute
5 about the authenticity of the '91 article or the other
6 letter. So I don't really see how it's relevant that
7 he's having her sign things. To me, it suggests undue
8 importance to the jury that she's signing these things
9 as though he's going to keep them in some collector's
10 box.

11 THE COURT: 1998 -- wait. The 1998 letter or
12 whatever that is, she signed it back in '98. Is that
13 right?

14 MS. COOPER: Yes, your Honor.

15 THE COURT: So rather than showing it to her
16 and asking her is this your signature, which he could
17 have done, he's just comparing what she signed, a copy
18 of the 1991 article with her signature now in 1998. Is
19 that right?

20 MS. COOPER: Yes. I believe in that part of
21 the deposition he is just comparing that it's the same
22 signature. And, your Honor, I'm more than willing to
23 cut out line 11 on 36 to 16, talking about the bakery.

24 THE COURT: Please. Okay. All right. I get
25 that. I mean, it could have been done differently, but

1 it wasn't. The other way around it is that, you know,
2 no one is objecting to or questions the authenticity of
3 the 1991 article being hers and this 1998 letter being
4 hers.

5 There's two ways of doing it. I don't mind
6 your way as long as we get rid of the objectionable
7 issues which really implies like some sort of, not that
8 he was trying to exercise undue influence on her, but
9 it shows an undue familiarity with one party over
10 another that we want to avoid.

11 MS. COOPER: Absolutely, your Honor.

12 THE COURT: Okay. Where do we go to now?

13 MR. WINER: Okay. The next issue is on page
14 40 of the transcript, relates to an exhibit, Exhibit
15 Number 9, which is what appears to be a printout from
16 the website that purports to be related to Johnson &
17 Johnson, but it's clearly not something that the
18 witness had ever seen. And counsel basically just
19 walked through and apparently asked questions about
20 setting up the context, you know, this stuff is used on
21 babies and, you know, trying to build up this whole
22 thing where there's really no foundation with the fact
23 witness.

24 He can ask her about her testing, but to
25 start going through lines from a blog post and trying

1 to make an argument about whether they are accurate or
2 not, I don't think is appropriate with a fact witness
3 like that, particularly when she hadn't seen it before.

4 MS. COOPER: And, your Honor, first of all,
5 as to the exhibit, I believe it is an admission by a
6 party opponent because it is from the J&J's blog and it
7 is their post. We've spoken about taking off this is
8 the stuff used on babies and we've taken out any
9 reference to her expertise. But I do think that it is
10 setting up context for this last sentence which is
11 since the 1970s it's been asbestos-free and then her
12 saying it does have asbestos, so it's --

13 THE COURT: I understand what you're saying,
14 but doesn't she say that anywhere else or is it all
15 predicated on this article that she's never seen and
16 basically it's Mr. Lanier reading in the document is
17 what's happening.

18 MR. WINER: I'm sorry, your Honor. On page
19 42 he asks the appropriate question which is, based
20 upon what you did, was Johnson & Johnson's Baby Powder
21 in the 1970s, you know, did it have asbestos. That's
22 the appropriate question.

23 THE COURT: And that question really stands
24 alone, because throughout this deposition talk about
25 her 1991 test and her paper, and I think that there's

1 also reference throughout this deposition about her
2 reaching out to the J&J attorneys. This is almost like
3 a non-sequitur here to this article that she has never
4 seen and it's essentially Mr. Lanier reading in the
5 document. And you're saying it's J&J and it's a party
6 admission. Well, bringing it, try bringing it in
7 throughout the trial, not through this witness who's
8 never seen it.

9 MS. COOPER: Absolutely, your Honor. Can we
10 agree to have it just from 42, line 3 to line 10, which
11 is starting with Dr. Blount, based on what you know or
12 you know from what you did.

13 THE COURT: Right.

14 MS. COOPER: Asking just the relevant
15 question.

16 THE COURT: You want to end it at 9 or 10?

17 MS. COOPER: At 10, please.

18 THE COURT: Okay. Any objection to that?

19 MR. WINER: No, your Honor.

20 THE COURT: Okay. Is that it for the defense
21 objections?

22 MR. WINER: Just a couple more.

23 THE COURT: I saw blue and got excited. I
24 didn't see we pick up on yellow again.

25 MR. WINER: I guess maybe then it does make

1 sense, if we're going to go in the order.

2 THE COURT: Why don't we do it that way for
3 continuity on reference.

4 MR. WINER: Sure.

5 MS. COOPER: I believe we had gotten actually
6 through all of the ones and we were able to agree.

7 MR. WINER: Even better.

8 MS. COOPER: We had been working, let me
9 double check with Mr. Winer. We had gotten through 79,
10 page 79.

11 THE COURT: That's remarkable progress.
12 Thank you.

13 MR. WINER: You're welcome.

14 MS. COOPER: It's the PowerBars.

15 MR. WINER: Actually, I think that is it.

16 The one, only issue I would raise, and I
17 don't mean to put Miss Cooper on the spot since we've
18 reached agreement on pretty much everything now, the
19 additional counters that you had proposed this morning
20 I don't think are necessary 'cause I think they were
21 really in response to some things that we have agreed
22 to cut.

23 MS. COOPER: And I would have to disagree
24 just because I believe that they were initially
25 designated as well. So starting on 86, which is the --

1 THE COURT: You know what, we don't need this
2 on the record. Why don't we go off the record.

3 (Proceedings adjourn at 2:49 p.m.)
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CERTIFICATION

I, ANDREA F. NOCKS, C.S.R., License Number
30XI00157300, an Certified Court Reporter in and for
the State of New Jersey, do hereby certify the
foregoing to be prepared in full compliance with the
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ANDREA F. NOCKS

February 22, 2019

CERTIFIED COURT REPORTER

DATE

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